

DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ANDREE LAYTON ROAF, Judge

CA05-1272

May 3, 2006

CHANDRA MILTON

APPELLANT

APPEAL FROM PULASKI COUNTY
CIRCUIT COURT
[NO. J2003-1798]

v.

ARKANSAS DEPARTMENT
OF HUMAN SERVICES

HONORABLE RITA W. GRUBER,
CIRCUIT JUDGE

APPELLEE

AFFIRMED

This case involves an appeal from a termination of parental rights. For reversal, appellant Chandra Milton argues that: (1) the termination order was not supported by substantial evidence of one or more grounds for termination, (2) the trial court erred when it found that termination was in the best interest of the children, and (3) her due process rights were violated because the trial court's termination order was improperly based upon the court's opinion as to the cause of one of her children's death while in foster care. We affirm.

On August 14, 2003, a protective service case was opened on Milton and her four children: D.M., S.Ma., S.M., and one-week-old S.B. There was evidence of environmental neglect and inadequate food. D.M. had also made allegations of sexual abuse against Milton's live-in boyfriend, disclosing that he had touched her on her private areas. The allegations were later found to be unsubstantiated, and Milton allowed her boyfriend to return to the home. A probable cause hearing was held on October 13, 2003, and the court ordered unsupervised visitation, a psychological evaluation, random drug screens, parenting classes, homemaker classes, and stable housing, income, and employment. On December 3, 2003, an adjudication

hearing was held, and the children were found dependent-neglected. The case worker, Megan Bush, recommended that Milton find a larger house for her family instead of the two-bedroom house she was currently living in. Bush recommended that the children remain in foster care until Milton obtained a larger house.

On June 2, 2004, a review hearing was held, and the court noted that the infant S.B. had passed away on February 2, 2004, nearly six months after he was placed in DHS custody. Bush testified that Milton had moved into a larger home but there was no central heat or air. The house had to be heated by space heaters, and this was a safety concern. Milton was ordered to have unsupervised visits, to submit to random drug screens, to be assessed for individual counseling, and to participate in family therapy with the children.

On October 4, 2004, a permanency planning hearing was held, and the goal was reunification. Milton had attended one therapy session with D.M. but had not returned, and she had visited S.Ma. while he was at Pinnacle Point. Milton had also recently suffered a miscarriage. Milton and D.M. got into an argument, because D.M. had seen the ex-boyfriend who had allegedly abused her at her grandmother's house. Milton told D.M. that she did not want her back. The court stated that Milton needed to go to counseling and seek medication management.

The termination hearing was held on March 20, 2005. Milton testified that she lived in a three-bedroom house with Ronnie Scott, a family friend that she had known for approximately eleven years. Milton did not believe that her daughter had been sexually abused by her ex-boyfriend, but she noted that she no longer lived with her ex-boyfriend. At the time of the hearing, Milton was unemployed, and Scott was her sole source of income. She admitted that she did not start counseling as soon as she should have. She attended therapy with D.M. four times and with S.Ma. three times at Pinnacle Point.

Bush testified that Milton had not failed to meet any of the case plan requirements. She did state that there was a problem with Milton attending therapy with D.M. on a regular basis.

Also, she testified that Milton's contact with S.Ma. was poor while he was at Pinnacle Point. Bush opined that Milton's home was adequate except for being equipped with gas heaters.

Renee Webb, a DHS case worker, began working on the case in January 2005. She testified that Milton had not demonstrated a sincere desire to repair her relationship with D.M. Webb was concerned about Milton's unemployment and her living with Scott. Brenda Keith, a DHS employee, testified that there were a number of adoptive families for the children.

Pam Abrams was Milton's therapist beginning in February 2005. She opined that Milton had made significant progress therapeutically. She had no concerns about Milton's ability to parent. Milton had no clinical finding of depression, but Abrams noted that her infant son had died while in foster care.

D.M., who was twelve years old at the time of the hearing, testified that she felt it would be best for her and her brothers to be adopted. She opined that they would be treated badly if they returned home. The hearing was continued for further testimony until June 27, 2005.

On June 27, 2005, Abrams testified that she felt Milton had not been honest with her in therapy sessions because of new information she found out on the day of this hearing concerning Milton's roommate, her pregnancy, and her employment. On the day of hearing, Abrams found out that Milton was twenty-eight weeks pregnant and had kept this information from her. Also, Abrams learned that Scott, Milton's roommate, had a drug history. Abrams had been under the impression since June 17, 2005, that Milton was working full-time. In fact, Milton had failed to show up for work and had not called. Her employer stated in a letter that Milton would be working only twelve hours a week for seven dollars an hour. Abrams did not recommend reunification with D.M., because Milton had made no progress with their relationship.

Webb testified that Milton told her that Scott drinks alcohol in the house and also uses cocaine outside of the house. She opined that Milton could not presently provide for her children, keep up with the house, and make utilities payments without Scott's assistance. Milton had told Webb that she (Milton) was afraid to let Webb know she (Milton) was pregnant because

she feared her child might be taken from her. Webb testified that she had questions about Milton's judgment.

Milton testified that she had lied to a DHS worker about being pregnant. She stated that Scott drank alcohol in the house every two weeks and that she did not think that Scott was currently using cocaine. She admitted that she was financially dependent on Scott and that it would be a struggle if he left. She never had a positive drug test. She stated her desire to get her two boys back but admitted that she did not want D.M. back because she could not "keep trying" with her.

Scott testified that he had used cocaine in the past but had not used it since last year. He admitted that he had a criminal record for robbery when he was nineteen years old. He further admitted to drinking in the house. The trial court terminated Milton's parental rights, and Milton now brings her appeal from this order.

Our standard of review in termination-of-parental rights cases is well-settled. In *Johnson v. Arkansas Department of Human Services*, 78 Ark. App. 112, 119, 82 S.W.3d 183, 187 (2002), the court wrote:

When the issue is one involving the termination of parental rights, there is a heavy burden placed upon the party to terminate the relationship. Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. Parental rights, however, will not be enforced to the detriment or destruction of the health and well-being of the child. The facts warranting termination of parental rights must be proven by clear and convincing evidence, and in reviewing the trial court's evaluation of the evidence, we will not reverse unless the court's finding of clear and convincing evidence is clearly erroneous. Clear and convincing evidence is that degree of proof which will produce in the fact finder a firm conviction regarding the allegation sought to be established. In resolving the clearly erroneous questions, we must give due regard to the opportunity of the trial court to judge the credibility of witnesses. Additionally, we have noted that in matters involving the welfare of young children, we will give great weight to the trial judge's personal observations.

An order forever terminating parental rights must be based upon clear and convincing evidence that the termination is in the best interests of the child, taking into consideration the likelihood that the child will be adopted and the potential harm caused by continuing contact with the parent. In addition to determining the best interests of the child, the court must find clear and convincing evidence that the circumstances exist that, according to the statute, justify terminating parental rights. (Citations omitted.)

Arkansas Code Annotated section 9-27-341 (Supp. 2005) states:

(b)(1)(A) The circuit court may consider a petition to terminate parental rights if the court finds that there is an appropriate permanency placement plan for the juvenile.

....
(3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:

(A) That it is in the best interest of the juvenile, including consideration of the following factors:

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and (ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by continuing contact with the parent, parents, or putative parent or parents, and

(B) Of one (1) or more of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

....
(vii)(a) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrates that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors of rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

Milton's first point on appeal is that the trial court erred in failing to use a clear and convincing standard for terminating her parental rights and by not specifically finding clear and convincing evidence of one of the grounds necessary for termination. She contends that the trial court did not base its decision to terminate on clear and convincing evidence and that there was insufficient evidence to terminate her parental rights. In its August 2, 2005 termination order, the circuit court stated:

Based on the entirety of the evidence and the circumstances surrounding the removal of the children from their mother's custody, the Court finds by clear and convincing evidence that it is in the children's best interest, and necessary to their safety and well-being, to terminate the parental rights of Chandra Milton ... and hereby does so.

It is clear from this statement that the trial court applied the correct burden of proof to this case. Moreover, this court reviews the record de novo, *see Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004), and here there is sufficient evidence of at least one ground for termination.

The trial court found that Milton had not remedied the conditions that caused her children to be removed and that other factors had arisen that demonstrated she did not have the capacity to do so or was indifferent to regaining custody. Milton argues that she corrected all the conditions that caused her children to be removed. The children were initially removed from the home because of environmental neglect and inadequate food. Milton only partially complied with the case plan. She failed to maintain gainful and stable employment and was totally, financially dependent on her male friend, Scott, who lived in her house. Milton admitted that Scott paid all of her bills, including all household expenses and her child support payments. Maintaining employment was crucial to Milton's stability and her ability to provide her children with appropriate housing and other needs. On the day of the termination hearing, DHS workers opined that Milton was not in a position to maintain appropriate and stable housing for the children without help from Scott. Moreover, Milton did not regularly participate in therapy as she was ordered.

Milton was unemployed throughout much of this case, and at the time of the termination hearing, she was about to begin working twelve hours a week for seven dollars an hour. Milton did not participate regularly in therapy sessions with D.M. and even stated that she had no interest in regaining custody of D.M. She was only interested in regaining custody of her two sons. There was substantial evidence that Milton could not maintain stable employment and could not maintain stable housing for her children without depending on Scott.

On the day of the termination hearing, DHS workers and Milton's therapist learned for the first time that Milton was twenty-eight weeks pregnant. She had previously lied to DHS about being pregnant. DHS and Milton's therapist also found out on the day of the hearing that Scott had a drug history and that Milton had recently procured employment but had failed to appear for work. Milton would only be working twelve hours per week. Both Milton's therapist and a DHS caseworker questioned Milton's credibility, and a DHS caseworker opined that Milton was not ready to provide stable housing for her children "and keep her house utilities up

at this point.” There is substantial evidence that other factors have arisen that demonstrate Milton does not have the capacity or is indifferent to regaining custody and that a return of the children to Milton would be contrary to her children’s health, safety, and welfare. The trial court’s finding, therefore, that there is clear and convincing evidence of grounds for termination is not erroneous.

Milton’s second point on appeal is that the trial court erred in finding that the termination of Milton’s parental rights was in the children’s best interest, because it did not consider the likelihood of adoption and the potential for harm if Milton continued contact with her children. She maintains that Ark. Code Ann. § 9-27-341(b)(3) requires that the trial court make specific finding as to both factors. A plain reading of the statute, however, requires only consideration of the two factors rather than specific findings as to each. Here, there is no evidence that the trial court failed to consider those two factors when it made its finding that it was in the children’s best interest to terminate Milton’s parental rights. Brenda Keith, an adoption specialist, testified that she found families who had been approved and were willing to adopt the children. From reading the trial court’s order, it is clear that the trial court could not have avoided considering the potential harm to the children’s health and safety by continued contact with Milton. The trial court even plainly stated that termination was “necessary for [the children’s] safety and well-being.” The trial court’s finding, therefore, that the termination of Milton’s parental rights was in the children’s best interest was not erroneous.

For her final point on appeal, Milton argues that the trial court based its decision to terminate upon its opinion as to the cause of her infant child’s death while in foster care, which prejudiced Milton and deprived her of her due process rights. There is no evidence here that the trial court gave any weight to the fact that Milton’s infant son had died while in foster care. After noting that Milton had suffered a miscarriage, the trial court simply stated in its order, “Unfortunately, one other child died during the course of this case ...due to failure to thrive” The trial court noted that Milton’s infant son had died while this case was ongoing, and there is

simply no evidence that the trial court attributed the child's death to Milton or improperly based its decision to terminate on this fact.

Affirmed.

HART and VAUGHT, JJ., agree.